

## § 639.11

## 49 CFR Ch. VI (10–1–15 Edition)

public body. In this part, a recipient includes an applicant for Federal financial assistance.

*FT Act* means the Federal Mass Transit Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*

*FTA* means the Federal Transit Administration.

### Subpart B—Requirements

#### § 639.11 Lease qualification requirements.

(a) A lease may qualify for capital assistance if it meets the following criteria:

(1) The capital asset to be acquired by lease is otherwise eligible for capital assistance;

(2) There is or will be no existing Federal interest in the capital asset as of the date the lease will take effect unless as determined pursuant to § 639.13(b); and

(3) Lease of the capital asset is more cost-effective than purchase or construction of the asset, as determined under subpart C of this part.

(b) Once a lease has been qualified for capital assistance, it need not be re-qualified absent an affirmative act or omission by the recipient that vitiates the cost-effectiveness determination.

#### § 639.13 Eligible types of leases.

(a) *General.* Any leasing arrangement, the terms of which provide for the recipient's use of a capital asset, potentially is eligible as a capital project under Chapter 53 of Title 49 of the United States Code, regardless of the classification of the leasing arrangement for tax purposes.

(b) *Special circumstances.* A recipient may request FTA to determine the eligibility of a certain financial arrangement if the recipient believes it might not meet the requirements of this part.

(c) *Lump sum lease.* A recipient that wishes to enter into a lease which requires the draw down of a single lump sum payment at the inception of the lease (or payments in advance of the incurrence of costs) rather than periodic payments during the life of the lease must notify FTA prior to execution of the lease concerning how it will ensure satisfactory continuing control of the asset for the duration of the

lease. FTA has the right to disapprove any arrangements where it has not been demonstrated that the recipient will have control over the asset. FTA may require the recipient to submit its cost-effectiveness comparison for review.

(d) *Pre-existing lease.* A lease entered into before grant approval, or before November 14, 1991 may be eligible for capital assistance for costs incurred after approval of such a lease by FTA under this part, if

(1) The lease is otherwise eligible under this part;

(2) The recipient can demonstrate that the lease, when entered into, was more cost effective than purchase or construction; and

(3) The procurement of the asset by lease was in accordance with Federal requirements that applied at the time the procurement took place.

[56 FR 51794, Oct. 15, 1991, as amended at 63 FR 68367, Dec. 10, 1998]

#### § 639.15 Eligible forms of grant.

A recipient may choose to receive capital assistance for a capital lease approved under this part—

(a) In a single grant under which lease payments may be drawn down periodically for the life of the lease; or

(b) In increments that are obligated by FTA periodically (usually in annual section 9 grants). In this case, a recipient—

(1) Must certify to FTA that it has the financial capacity to meet its future obligations under the lease in the event Federal funds are not available for capital assistance in subsequent years; and

(2) May incur costs under its lease before FTA's obligation of future increments of funding for such a lease. These costs are reimbursable in future grants, so long as the terms of the lease do not substantially change.

#### § 639.17 Eligible lease costs.

(a) All costs directly attributable to making a capital asset available to the lessee are eligible for capital assistance, including, but not limited to—

(1) Finance charges, including interest;

(2) Ancillary costs such as delivery and installation charges; and

(3) Maintenance costs.

(b) Any asset leased under this part must be eligible for capital assistance under a traditional purchase or construction grant.

[61 FR 25090, May 17, 1996]

#### § 639.19 Other Federal requirements.

(a) A recipient of capital assistance for a capital lease is subject to the same statutory and administrative requirements as a recipient who purchases or constructs a capital asset.

(b) A lessor of a capital lease is subject to the same statutory and administrative requirements as a direct seller of the same capital asset would be when the lessor—

(1) Purchases or constructs a capital asset in contemplation of leasing it to a recipient; or

(2) Modifies an existing capital asset in contemplation of leasing it to a recipient.

### Subpart C—Cost-Effectiveness

#### § 639.21 Determination of cost-effectiveness.

(a) To qualify a lease for capital assistance, a recipient must—

(1) Make a written comparison of the cost of leasing the asset with the cost of purchasing or constructing it; and

(2) Certify to FTA before entering into the lease or before receiving a capital grant for the asset, whichever is later, that obtaining the asset by lease is more cost-effective than purchase or construction of such asset.

(b) For purposes of this part, obtaining the asset by lease is more cost-effective than purchase or construction when the lease cost calculated under § 639.25 of this part is less than the purchase cost calculated under § 639.23 of this part.

(c) If a recipient is unable to perform the prescribed cost-effectiveness comparison as described in this subpart, it may ask FTA to approve an alternate form of cost-effectiveness evaluation.

#### § 639.23 Calculation of purchase or construction cost.

(a) For purposes of this subpart, the purchase or construction cost of a capital asset is—

(1) The estimated cost to purchase or construct the asset; plus

(2) Ancillary costs such as delivery and installation; plus

(3) The net present value of the estimated future cost to provide any other service or benefit requested by the applicant in its proposal to obtain the capital asset.

(b) The estimated cost to purchase or construct must be—

(1) Reasonable;

(2) Based on realistic current market conditions; and

(3) Based on the expected useful life of the asset in mass transportation service, as indicated in paragraph (c) of this section.

(c) For purposes of this part, the expected useful life of a revenue vehicle is the useful life which is established by FTA for recipients of Federal assistance under FTA's Circulars for section 9 recipients. For assets other than revenue vehicles, the applicant is responsible for establishing a reasonable expected useful life. If the recipient does not intend to use the capital asset it is proposing to obtain by lease in mass transportation service for its entire expected useful life, when calculating the purchase cost, the recipient must calculate the fair market value of the asset as of the date the lease will terminate pursuant to Guidelines found in section 108(b) of part II Standard Terms and Conditions for valuation of property withdrawn from transit use before the end of its useful life and subtract that amount from the purchase price. The resulting amount is the purchase price for purposes of this rule.

#### § 639.25 Calculation of lease cost.

(a) For purposes of this part, the lease cost of a capital asset is—

(1) The cost to lease the asset for the same use and same time period specified in the recipient's proposal to obtain the asset by purchase or construction; plus

(2) Ancillary costs such as delivery and installation; plus

(3) The net present value of the estimated future cost to provide any other service or benefit requested by the applicant in its proposal to obtain the capital asset.